

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DANIEL MOTHERWAY,

Plaintiff,

v.

DANIEL N. GORDON, P.C., LVNV  
FUNDING, LLC,

Defendants.

Case No. 09-cv-05605-RBL

ORDER ON SUMMARY JUDGMENT

THIS MATTER is before the court on Defendant's Motion for Summary Judgment [Dkt. #20] and Plaintiff's Cross-Motion for Partial Summary Judgment [Dkt. #23]. The case arises from the debt collection actions taken by Defendant Gordon, P.C. for a debt owed to Defendant LVNV Funding, LLC by Plaintiff Daniel Motherway.

In order to collect the debt owed to their client, LVNV, Gordon communicated with Motherway via letter and telephone, and subsequently commenced a legal action against him in the Pierce County District Court.

Motherway (the plaintiff here) now alleges violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, *et seq*, and the Washington Collection Agency Act ("WCAA"), RCW Chapter 19.16. He claims that Gordon failed to include required information in litigation documents sent to him in the Pierce County case, and that Gordon unlawfully requested permission from that court to contact third parties regarding his debt.

1 Defendant Gordon argues that no required information was omitted from any  
2 communication with Motherway, that requesting a court's permission to contact third parties  
3 does not violate the FDCPA, and that Gordon is not regulated by the WCAA because it is not a  
4 collection agency.

5 For the reasons that follow, Gordon's Motion for Summary Judgment [Dkt. #20] is  
6 GRANTED and Motherway's claims against Gordon are DISMISSED with prejudice.  
7 Motherway's Cross-Motion for Partial Summary Judgment [Dkt. #23] is DENIED.

### 8 I. FACTS

9 Motherway built up a \$1,110.96 credit card debt to Sears. LVNV purchased the debt  
10 from Sears and hired Gordon, a law firm with roughly 95% of its business in credit card debt  
11 collection, as their legal counsel for a collection lawsuit against Motherway.

12 Gordon's initial communication to Motherway was via letter dated August 2, 2008,  
13 which stated "[t]his firm has been retained with the authority to file a lawsuit against you for a  
14 debt owed by you to LVNV Funding...[t]his communication is from a debt collector. This is an  
15 attempt to collect a debt, and any information obtained will be used for that purpose."  
16 [Aylworth Aff., Dkt. #21, at Ex. 1]. On August 21, 2008, Gordon and Motherway had a phone  
17 conversation in which Gordon repeated that it was a debt collector attempting to collect a debt.  
18 Gordon had no other communications with Motherway between August 2, 2008 and October  
19 30, 2008.

20 On October 30, 2008, Gordon sent a case cover sheet, summons, and complaint<sup>1</sup> to the  
21 Pierce County District Court for filing. None of these documents contained language  
22 identifying Gordon as a debt collector. The complaint contained a request that "[t]he Court  
23 authorize Plaintiff, its agents, attorneys and assigns to contact third persons and entities for the  
24 purpose of collecting its judgment entered in this court. The Court should also authorize  
25 Plaintiff, its agents, attorneys and assigns to reveal the existence of Defendant's debt to such  
26 third persons and entities." *Id.* at Ex. 3. The summons and complaint were later served on  
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28 <sup>1</sup> The complaint sought money damages for breach of contract. [*See* Aylworth Aff., Dkt. # 21., at Ex. 3]

1 Motherway, who filed a pro se answer asserting a statute of limitations defense on December  
2 17, 2008. *See Id.* at Ex. 4.

3 On or about January 5, 2009, Gordon mailed Requests for Admissions with a cover  
4 letter to the Pierce County District Court for filing. Gordon also mailed both documents to  
5 Motherway. Neither contained language identifying Gordon as a debt collector. On June 22,  
6 2009, Gordon mailed a Note for Motion Docket, Notice of Hearing, Motion for Summary  
7 Judgment and Affidavit, Proposed Order, Proposed Money Judgment, and cover letter to the  
8 Pierce County District Court and to Motherway. None of the documents contained language  
9 identifying Gordon as a debt collector. On July 9, 2009, Gordon mailed an Amended Note for  
10 Motion Docket, Amended Notice of Hearing, and cover letter to the Pierce County District  
11 Court and to Motherway. Again, the documents did not identify Gordon as a debt collector.

12 Plaintiff Motherway filed this action against Gordon and LVNV on September 28,  
13 2009, alleging violations of the FDCPA and WCAA. [Dkt. #1, Complaint]. He filed his First  
14 Amended Complaint [Dkt. #4] on October 19, 2009. Gordon filed its Motion for Summary  
15 Judgment [Dkt. #20] on May 21, 2010, seeking dismissal of all claims against it. Motherway  
16 filed his Response and Cross-Motion for Partial Summary Judgment [Dkt. #23] on June 7,  
17 2010, seeking denial of Gordon's motion and judgment against Defendants on the issue of  
18 FDCPA liability. This court granted Motherway's Motion for Leave to Withdraw his Motion  
19 for Partial Summary Judgment *Against LVNV Funding Only* [Dkt. #30] on July 9, 2010.

## 20 **II. DISCUSSION**

### 21 **A. Summary Judgment Standard**

22 Summary judgment is appropriate when, viewing the facts in the light most favorable to  
23 the nonmoving party, there is no genuine issue of material fact which would preclude summary  
24 judgment as a matter of law. Once the moving party has satisfied its burden, it is entitled to  
25 summary judgment if the non-moving party fails to present, by affidavits, depositions, answers  
26 to interrogatories, or admissions on file, "specific facts showing that there is a genuine issue for  
27 trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). "The mere existence of a scintilla of  
28 evidence in support of the non-moving party's position is not sufficient." *Triton Energy Corp.*

1 *v. Square D Co.*, 68 F.3d 1216, 1221 (9<sup>th</sup> Cir. 1995). Factual disputes whose resolution would  
 2 not affect the outcome of the suit are irrelevant to the consideration of a motion for summary  
 3 judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In other words,  
 4 “summary judgment should be granted where the nonmoving party fails to offer evidence from  
 5 which a reasonable [fact finder] could return a [decision] in its favor.” *Triton Energy*, 68 F.3d  
 6 at 1220.

7 Here, the material facts are undisputed. [See Dkt. #24, Defendants’ Reply; Dkt. #27,  
 8 Plaintiff’s Reply]. The only issue is whether post-complaint litigation filings must reiterate that  
 9 they are an effort to collect a debt under the FDCPA and WCAA. This is a legal question  
 10 amenable to resolution by summary judgment.

## 11 **B. FDCPA Claims**

### 12 **1. Communications between Gordon and Motherway**

13 Motherway brings his first claim alleging Defendants’ violations of the FDCPA. He  
 14 correctly asserts that Gordon did not notify him in post-pleading litigation documents that the  
 15 communication was from a debt collector. FDCPA § 1692e places certain disclosure  
 16 requirements on communications between a debt collector and debtor:

17 Without limiting the general application of the foregoing, *the following conduct is*  
 18 *a violation of this section:*

19 (11) The failure to disclose in the initial written communication with the  
 20 consumer and, in addition, if the initial communication with the consumer is oral,  
 21 in that initial oral communication, that the debt collector is attempting to collect a  
 22 debt and that any information obtained will be used for that purpose, and the  
 23 *failure to disclose in subsequent communications that the communication is from*  
*a debt collector, except that this paragraph shall not apply to a formal pleading*  
*made in connection with a legal action.*

24 15 U.S.C. § 1692e (emphasis added).

25 Motherway focuses on the technical definition of “pleading,” arguing that it does not  
 26 include litigation documents other than complaints, answers, and replies. CR 7. From this, he  
 27 infers that subsequent litigation documents, such as motions for summary judgment and  
 28 requests for admission, are not exempt from the requirement of notice that the communication

1 is from a debt collector. While it is true that the statutory language can theoretically be  
2 construed in Motherway's favor, such an interpretation goes against common sense and will not  
3 be adopted by this court.

4 Here, the initial communication between Gordon and Motherway contained all of the  
5 requisite information. [See Aylworth Aff., Dkt. #21, at Ex. 1]. In the subsequent phone call  
6 Gordon identified itself as a debt collector. The summons and complaint subsequently served  
7 on Motherway did not include this language. This omission is specifically permitted under the  
8 FDCPA § 1692e(11) exemption for formal pleadings made in connection with litigation.

9 It does not make sense that Gordon is required to re-affirm its status as a debt collector  
10 in subsequent, post-pleading litigation documents. Motherway has cited no authority for the  
11 novel proposition that motions for summary judgment<sup>2</sup> are subject to § 1692e(11), and that a  
12 creditor or his lawyer risks becoming a debtor if he fails to reiterate that the purpose of the debt  
13 collection lawsuit is to collect a debt. The court can find no such authority, and is unwilling to  
14 be the first to apply the FDCPA in this fundamentally nonsensical manner.

## 15 **2. Request for Third Party Communications**

16 Motherway correctly asserts that in the underlying Pierce County case Gordon  
17 requested permission from that court to contact third persons and entities regarding  
18 Motherway's debt and the collection of a judgment. [See Aylworth Aff., Dkt. #21, at Ex. 3].  
19 However, Motherway incorrectly alleges that this constitutes "unfair and unconscionable  
20 means against Plaintiff in connection with an attempt to collect a debt." [Dkt. #4, First  
21 Amended Complaint]. FDCPA § 1692c(b) specifically permits a debt collector to request  
22 permission from a court to contact third parties regarding the debt:

23 Except as provided in section 1692b of this title, without the prior consent of the  
24 consumer given directly to the debt collector, *or the express permission of a court*  
25 of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment  
26 judicial remedy, a debt collector may not communicate, in connection with the  
27 collection of any debt, with any person other than the consumer, his attorney, a  
attorney of the creditor, or the attorney of the debt collector.

28 <sup>2</sup> Motion for summary judgment is used as an example referring to all post-pleading litigation documents.  
Others relevant to this case include request for admissions, notice of hearing, note for motion docket etc.

1 15 U.S.C. § 1692c(b) (emphasis added). Motherway argues that contacting third parties is not  
 2 reasonably necessary for the purpose of collecting on a judgment against him, and thus  
 3 “[Gordon] requested that the court authorize [it] to take action prohibited by the FDCPA,” and  
 4 “[a]sking a court to grant [Gordon] the authority to violate the FDCPA would be an  
 5 unconscionable tactic.” [Dkt. #4].

6 Gordon is not asking permission to violate the FDCPA. Rather, Gordon closely adheres  
 7 to the FDCPA, as requesting the express permission of a court of competent jurisdiction to  
 8 contact third parties regarding the debt is unambiguously prescribed in § 1692c(b). Gordon is  
 9 not threatening Motherway or using any unconscionable tactics, but merely following the  
 10 proper steps to lawfully take what it sees as an appropriate measure in the debt collection  
 11 lawsuit. The reasonableness and necessity of contacting third parties is for the underlying court  
 12 to decide, and has no bearing on Gordon’s compliance with the FDCPA<sup>3</sup>.

13 Viewing the evidence in the light most favorable to Motherway, he cannot establish that  
 14 Gordon violated the FDCPA in its legal filings or in its request to contact third parties  
 15 regarding Motherway’s debt. Accordingly, Motherway’s FDCPA claims fail as a matter of law  
 16 and Gordon’s motion for summary judgment dismissing them is GRANTED. Motherway’s  
 17 cross-motion for summary judgment on his FDCPA claims is DENIED<sup>4</sup>.

### 18 **C. WCAA Claims**

19 Motherway also claims that Gordon’s actions violated the WCAA, and in turn the  
 20 Washington Consumer Protection Act, RCW Chapter 19.86. *See* RCW 19.16.440. The WCAA  
 21 regulates “collection agencies,” but specifically does not apply to lawyers:  
 22

23 (3) “Collection agency” does not mean and *does not include*:

24 (c) Any person whose collection activities are carried on in his, her, or its true  
 25 name and are confined and are directly related to the operation of a business other  
 26 than that of a collection agency, such as but not limited to: Trust companies;  
 27 savings and loan associations;...; *lawyers*; insurance companies; credit unions;  
 28 loan or finance companies; mortgage banks; and banks

<sup>3</sup> The reasonableness of contacting third parties would only matter if Gordon had done so without permission from the court or from Motherway.

<sup>4</sup> Motherway already withdrew his cross-motion for partial summary judgment against LVNV.

1 RCW 19.16.100 (emphasis added).

2 Gordon's collection activities are confined and directly related to the operation of  
3 another business: a law firm. While Gordon specializes in debt collection legal work, it is first  
4 and foremost a law firm. In other words, Gordon's business is the practice of law, through  
5 which it often engages in debt collection activities. Gordon does not engage in debt collection  
6 activity outside of the legal realm, i.e. the litigation of debt collection cases. Even the initial  
7 letter sent by Gordon to Motherway before filing the complaint states "[t]his firm has been  
8 retained with the authority to file a lawsuit against you for a debt owed..." [Aylworth Aff., Dkt.  
9 #21, at Ex. 1].

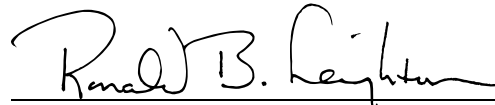
10 Because Gordon is a law firm which only engages in the legal aspects of debt  
11 collection, it is not a "collection agency" for the purposes of WCAA regulation. Accordingly,  
12 Motherway's claim alleging Gordon's violations of the WCAA fails as a matter of law, and  
13 Gordon's motion for summary dismissal of this claim is GRANTED.

#### 14 CONCLUSION

15 Gordon's Motion for Summary Judgment [Dkt. #20] is GRANTED, and Motherway's  
16 claims against Gordon are DISMISSED with prejudice. Plaintiff's Cross-Motion for Partial  
17 Summary Judgment [Dkt. #23] is DENIED. Motherway's claims against the remaining  
18 defendant are not addressed by this order.

19 **IT IS SO ORDERED.**

20 DATED this 15<sup>th</sup> day of July, 2010

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23 RONALD B. LEIGHTON  
24 UNITED STATES DISTRICT JUDGE  
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